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10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 REQUEST FROM GEORGIA  
FOR ASSISTANCE IN A  
13 CRIMINAL MATTER  
14  
15

No. CR Misc.

18CM01643

EX PARTE APPLICATION FOR ORDER  
APPOINTING COMMISSIONER; EXHIBIT

16 Applicant United States of America hereby applies to this Court  
17 ex parte for an order, pursuant to the United Nations Convention  
18 against Corruption, S. Treaty Doc. No. 109-6 (2004), as well as  
19 18 U.S.C. § 3512, and its own inherent power, appointing Assistant  
20 United States Attorney John J. Lulejian as a Commissioner of the  
21 Court for the purpose of obtaining evidence sought by Georgia. This  
22 application is made pursuant to a Request for Legal Assistance in a

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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

FILED

1 Criminal Matter from Georgia and is based on the aforementioned  
2 treaty and the attached Memorandum of Points and Authorities and  
3 Exhibit.

4 DATED: September 10, 2018

Respectfully submitted,

5 NICOLA T. HANNA  
6 United States Attorney

7 LAWRENCE S. MIDDLETON  
8 Assistant United States Attorney  
9 Chief, Criminal Division

10 /s/ John J. Lulejian  
11 JOHN J. LULEJIAN  
12 Assistant United States Attorney

13 Attorneys for Applicant  
14 UNITED STATES OF AMERICA  
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MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

A. SUMMARY

Pursuant to the United Nations Convention against Corruption, S. Treaty Doc. No. 109-6 (2004) (hereinafter the "Treaty"; copy of the Treaty attached hereto as Exhibit 1), the Government of Georgia has asked the United States for assistance in connection with a criminal proceeding underway in Georgia. The Treaty provides that "[t]he requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request." Ex. 1, Treaty, Art. 46(20). However, in this case, Georgia has not requested confidentiality.

Applicant United States of America asks that Assistant United States Attorney John J. Lulejian be appointed a Commissioner of the Court to carry out portions of the Request applicable to this judicial district.<sup>1</sup>

B. FACTS

The facts of the Request may be summarized as follows:

Georgian authorities are investigating Global Crossing LLC and LLC Intericap Georgia, two companies owned by VICTOR LAPIN, also known as "Randy Craig Levin" ("LAPIN"), for money laundering. According to Georgian authorities, on or about April 13, 2017, and May 10, 2017, a total of approximately \$ 20,000 was transferred to the account of Global Crossing LLC from a Bank of America account in the United

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<sup>1</sup> A copy of the Request is not attached, because nationally, the government has ceased attaching mutual legal assistance requests to its filed Ex Parte Applications for Order Appointing Commissioner.

1 States belonging to T.V.P. On or about May 8, 2017, a total of  
2 approximately \$ 31,481 was transferred to the account of Global  
3 Crossing LLC from a Heritage Oaks Bank account in the United States  
4 belonging to Continuing Church of God Overseer and Successors.  
5 Georgian authorities suspect money laundering because the funds  
6 received from the United States were moved by LAPIN to an LLC  
7 InterCap Georgia account, his personal account, or spent on a bank  
8 card owned by LAPIN. Based on their preliminary investigation,  
9 Georgian authorities believe that LAPIN is wanted by American  
10 authorities for fraud offenses.

11 Georgian authorities are investigating LAPIN for fraud and money  
12 laundering pursuant to the Criminal Code of Georgia.

13 **C. ASSISTANCE REQUESTED**

14 With respect to the Central District of California, Georgian  
15 authorities have requested assistance in obtaining bank records from  
16 Bank of America and Heritage Oak Bank for T.V.P. and Continuing  
17 Church of God Overseer and Successors, both of which have branches  
18 within this district. Also, Georgian authorities have requested that  
19 American authorities interview T.V.P., who resides in Lancaster,  
20 California, and a representative of Continuing Church of God Overseer  
21 and Successors, whose corporate address is Grover Beach, California,  
22 regarding the above bank transfers, LAPIN, and other aspects of the  
23 Georgian money laundering investigation.



1 II. DISCUSSION

2 A. THE ORDER SOUGHT IS APPROPRIATE TO ENABLE THE UNITED STATES  
3 TO FULFILL ITS TREATY OBLIGATIONS

4 1. The Treaty

5 The United States is seeking an order appointing a Commissioner  
6 to execute the Request from Georgia. A treaty constitutes the law of  
7 the land. See U.S. Const. Art. VI. The provisions of a treaty stand  
8 on equal footing with acts of Congress and are binding on the courts.  
9 See Asakura v. City of Seattle, 265 U.S. 332, 341 (1924), amended, 44  
10 S. Ct. 634 (1924); United States v. Schooner Peggy, 5 U.S. (1 Cranch)  
11 103. To the extent that self-executing provisions of a treaty are  
12 inconsistent with a preexisting statutory provision, the treaty  
13 supersedes the statute. Zschernig v. Miller, 389 U.S. 429, 440-441  
14 (1968); In re Premises Located at 840 140th Ave. NE, Bellevue, Wash.,  
15 634 F.3d 557, 568 (9th Cir. 2011); In re Erato, 2 F.3d 11, 15 (2nd  
16 Cir. 1993).

17 The Treaty obligates to "States Parties shall afford one another  
18 the widest measure of mutual legal assistance in investigations,  
19 prosecutions and judicial proceedings in relation to the offences  
20 covered by this Convention." See Ex. 1, Treaty, Art. 46(1). The  
21 United States and Georgia entered into the Treaty to "promote,  
22 facilitate and support international cooperation and technical  
23 assistance in the prevention of and fight against corruption . . . ."  
24 Ex. 1, Treaty, Art. 1(a). The Treaty obligates each party to provide  
25 assistance to the other in investigations and prosecutions of  
26 offenses, and in proceedings related to criminal matters. See Ex. 1,  
27 Art. 38. See also In re Commissioner's Subpoenas, 325 F.3d 1287,  
28 1290 (11th Cir. 2003). Each party contemplated that it would provide



1 the other with assistance generally comparable to that which is  
2 available to its own law enforcement authorities, which assistance  
3 includes taking testimony or statements of persons, providing  
4 documents and other evidence, and immobilizing assets See Ex. 1,  
5 Treaty, Art. 46(3). See also Barr v. U. S. Dep't of Justice, 645 F.  
6 Supp. 235, 237 (E.D.N.Y. 1986), aff'd, 819 F.2d 25 (2d Cir. 1987).

7 The Treaty and 18 U.S.C. § 3512 empower federal courts to  
8 execute treaty requests in order to comply with the United States'  
9 treaty obligations, including through the use of compulsory measures.

10 The Treaty may impose a dual criminality requirement as a  
11 precondition for providing assistance. See generally Ex. 1, Treaty,  
12 Art. 43(2). If dual criminality is considered a requirement, the  
13 conduct under investigation or prosecution must constitute an offence  
14 under the laws of the Requested State. See Ex. 1, Treaty,  
15 Art. 43(2). It is not clear from the Request whether there is a dual  
16 criminality requirement in the context of this multilateral treaty.  
17 Nonetheless, the conduct described in the Request (both fraud and  
18 money laundering) constitutes offenses under the laws of the United  
19 States, satisfying the dual criminality requirement, to the extent it  
20 is applicable.

21 The Treaty contains a non-exhaustive list of assistance that  
22 must be rendered upon proper request, which includes "locating or  
23 identifying persons or items," and "taking the testimony or  
24 statements of persons." Ex. 1, Treaty, Art. 46(3). It also includes  
25 "[a]ny other type of assistance that is not contrary to the domestic  
26 law of the Requested State Party" Ex. 1, Treaty, Art. 46(3)(i). The  
27 Treaty makes clear that the requirement that assistance be rendered  
28

1 is mandatory and that the parties "shall provide mutual assistance."  
2 Ex. 1, Treaty, Art. 46(2).

3           **2.    Statutory Authority**

4           The Treaty is designed to be self-executing and requires no  
5 implementing legislation. See also In re Premises Located at 840  
6 140th Ave. NE, Bellevue, Wash., 634 F.3d at 568. However, because  
7 the procedural provisions in many treaties are minimal, in the past,  
8 federal courts routinely utilized procedures authorized by 28 U.S.C.  
9 § 1782 (the "commissioner" process) to execute treaty requests from  
10 foreign authorities. Id. Substantive federal law regarding  
11 searches, seizures, and other compulsory processes further grounded  
12 the execution of such assistance requests.

13           On October 19, 2009, the President signed the Foreign Evidence  
14 Request Efficiency Act of 2009, Pub. Law No. 111-79, 123 Stat. 2086,  
15 which enacted 18 U.S.C. § 3512. Section 3512 explicitly authorizes a  
16 federal court to:

17           issue such orders as may be necessary to execute a request  
18           from a foreign authority for assistance in the  
19           investigation or prosecution of criminal offenses, or in  
20           proceedings related to the prosecution of criminal  
21           offenses, including proceedings regarding forfeiture,  
22           sentencing, and restitution.

23           Section 3512 directly empowers federal courts to execute such  
24 requests and separately codifies under Title 18 the longstanding  
25 practice and procedures employed by the United States and the federal  
26 courts to execute requests by foreign authorities for assistance to  
27 the fullest extent possible under United States law. Congress  
28 enacted Section 3512 to make it "easier for the United States to

1 respond to these requests by allowing them to be centralized and by  
2 putting the process for handling them within a clear statutory  
3 scheme." 155 Cong. Rec. S6807-01 (2009) (Statement of Sen.  
4 Whitehouse).

5       **B. EXECUTION OF FOREIGN REQUESTS FOR ASSISTANCE UNDER THE**  
6       **TREATY AND SECTION 3512**

7       1. Authorization of the Application to this Court

8       Section 3512 provides,

9       Upon application, duly authorized by an appropriate  
10      official of the Department of Justice, of an Attorney for  
11      the Government, a Federal judge may issue such orders as  
12      may be necessary to execute a request from a foreign  
13      authority for assistance in the investigation and  
14      prosecution of criminal offenses, or in proceedings related  
15      to the prosecution of criminal offenses, including  
16      proceedings regarding forfeiture, sentencing and  
17      restitution.

18      For purposes of Section 3512, an application is "duly authorized by  
19      an appropriate official of the Department of Justice" when the Office  
20      of International Affairs of the Department of Justice's Criminal  
21      Division has reviewed and authorized the request and is executing the  
22      request itself or has delegated the execution to another attorney for  
23      the government. Because of the facts and circumstances set forth in  
24      the Request, Section 3512(c) authorizes filing the instant  
25      application in the Central District of California.<sup>2</sup> Accordingly, the

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26  
27      <sup>2</sup> 18 U.S.C. § 3512 provides, in relevant part:  
28



1 Request has been referred to this district for execution.

2           2.   Foreign Authority Seeking Assistance Within Section  
3               3512 and the Treaty

4           As to the "foreign authority" making the Request, Section  
5 3512(h) provides,

6           The term "foreign authority" means a foreign judicial  
7 authority, a foreign authority responsible for the  
8 investigation or prosecution of criminal offenses or for  
9 proceedings related to the prosecution of criminal  
10 offenses, or an authority designated as a competent  
11 authority or central authority for the purpose of making  
12 requests for assistance pursuant to an agreement or treaty  
13 with the United States regarding assistance in criminal  
14 matters.

15           In this matter the Office of the Chief Prosecutor, Ministry of  
16 Justice of Georgia, is the designated Central Authority in Georgia

17  
18           (c) Filing of requests.-- Except as provided under  
19 subsection (d), an application for execution of a request  
from a foreign authority under this section may be filed--

- 20           (1) in the district in which a person who may be required  
to appear resides or is located or in which the documents  
or things to be produced are located;  
21           (2) in cases in which the request seeks the appearance of  
persons or production of documents or things that may be  
22 located in multiple districts, in any one of the districts  
in which such a person, documents, or things may be  
23 located; or  
24           (3) in any case, the district in which a related Federal  
criminal investigation or prosecution is being conducted,  
or in the District of Columbia.

25           (d) Search warrant limitation. -- An application for  
26 execution of a request for a search warrant from a foreign  
authority under this section, other than an application for  
27 a warrant issued as provided under section 2703 of this  
title, shall be filed in the district in which the place or  
28 person to be searched is located.



1 for requests made pursuant to the Treaty. See Ex. 1, Treaty,  
2 Art. 46(13).

3 As evidenced by the Request itself and confirmed in the  
4 authorization process and again by the undersigned, consistent with  
5 Section 3512(a)(1), the foreign authority seeks assistance in the  
6 investigation or prosecution of criminal offenses or in proceedings  
7 related to the prosecution of criminal offenses.

8 3. Authority of the Federal Courts Under Section 3512

9 When enacting Section 3512, Congress intended that federal  
10 courts facilitate to the fullest extent possible the execution of  
11 requests by foreign authorities for assistance in criminal matters  
12 and endeavored to streamline and expedite the execution of such  
13 requests. Section 3512 authorizes federal courts to issue "such  
14 orders as may be necessary to execute a request" and specifically  
15 includes: orders for search warrants pursuant to Federal Rule of  
16 Criminal Procedure 41; orders for stored wire or electronic  
17 communications and related evidence under 18 U.S.C. § 2703; orders  
18 for pen registers and trap and trace devices under 18 U.S.C. § 3123;  
19 orders for the provision of testimony or other statements, or the  
20 production of documents or other things, or both; and orders  
21 appointing "a person" to direct the taking of testimony/statements or  
22 the production of documents or other things, or both. See 18 U.S.C.  
23 § 3512(a)(1), (2).

24 The assistance requested by Georgia pursuant to the Treaty by  
25 the Office of the Chief Prosecutor, Ministry of Justice of Georgia,  
26 in the instant Request falls squarely within that contemplated by  
27 both the Treaty and Section 3512.

C. APPOINTMENT OF A PERSON AS COMMISSIONER TO COLLECT EVIDENCE

1. Statutory Authorization

Section 3512(b) provides that a federal judge may "issue an order appointing a person to direct the taking of testimony or statements or of the production of documents or other things, or both." The statute further authorizes the person appointed to issue orders requiring the appearance of a person, or the production of documents or other things, or both; administer any necessary oath; and take testimony or statements and receive documents or other things. In keeping with past practice under 28 U.S.C. § 1782, a federal court may appoint an attorney for the government, typically a federal prosecutor, as "commissioner."

2. Procedures for Evidence Collection

Section 3512(a) specifically empowers a federal judge to issue "such orders as may be necessary" to execute the request. This authorization encompasses orders specifying the procedures to be used to collect particular evidence, including procedures requested by the foreign authority to facilitate its later use of the evidence. In executing a request made pursuant to a treaty, a court has the obligation to prescribe effective and expeditious procedures designed to promote the purpose of the treaty. See In re Commissioner's Subpoenas, 325 F.3d at 1305. Nothing in Section 3512 suggests any limitation on a court's power to exercise "complete discretion in prescribing the procedure to be followed," as was available under 28 U.S.C. § 1782. See In re Letter of Request from the Crown Prosecution Serv. of the U.K., 870 F.2d 686, 693 (D.C. Cir. 1989), (quoting S. Rep. No. 88-1580 (1964), reprinted in 1964 U.S.C.C.A.N. 3782, 3789. See White v. National Football League, 41 F.3d 402, 409 (8th Cir.



1994) (a court may issue whatever process it deems necessary to facilitate disposition of a matter before it); Fed. R. Crim. P. 57(b) ("A judge may regulate practice in any manner consistent with federal law, these rules, and the local rules of the district.").

a. Procedures Authorized by Other Statutes

In addition, Section 3512 references specific federal laws for obtaining certain evidence and, by doing so, adopts any statutorily mandated procedures in relation to obtaining orders for search warrants; orders for contents of stored wire or electronic communications or for records related thereto; and orders for a pen register or a trap and trace device.

b. Orders by the Person Appointed; Commissioner Subpoenas

Section 3512 authorizes the "person" appointed (here, and in past practice under 28 U.S.C. § 1782, the "commissioner") to issue orders "requiring the appearance of a person, or the production of documents or other things or both." Further, Article 46 of the Treaty implicitly provides for the issuance of procedural documents, such as subpoenas, to gather evidence by requiring that "[m]utual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings . . . ." Ex. 1, Treaty art. 46(2).

The commissioner may issue a "commissioner's subpoena," to obtain the requested evidence. See In re Commissioner's Subpoenas, 325 F.3d at 1291 (incorporating in pertinent part a district court's order directing use of commissioner's subpoenas); In re Erato, 2 F.3d at 13-14 (same). Section 3512 expressly authorizes the service and

1 enforcement of such orders, or commissioner's subpoenas, anywhere in  
2 the United States (i.e., coextensive with the service of subpoenas in  
3 U.S. criminal investigations and prosecutions).

4 **c. Notice of Evidence Taking**

5 As an initial matter, this application is being made ex parte,  
6 consistent with the practice of the United States in its domestic  
7 criminal matters and its prior practice on behalf of foreign  
8 authorities under 28 U.S.C. § 1782. In re Letter of Request from the  
9 Crown Prosecution Serv. of the U.K., 870 F.2d at 688; In re Letters  
10 Rogatory from the Tokyo Dist., Tokyo, Japan, 539 F.2d 1216, 1219 (9th  
11 Cir. 1976). The Treaty itself contemplates the need for  
12 confidentiality with respect to all aspects of the execution of  
13 requests. See Ex. 1, Treaty, Art. 46(20). In this case, however,  
14 Georgia has not requested that the United States treat its request  
15 and the execution of its request as confidential.

16 Section 3512 authorizes the use of compulsory process in the  
17 execution of treaty requests comparable or similar to that used in  
18 domestic criminal investigations or prosecutions. Because subpoenas  
19 utilized in U.S. criminal proceedings (i.e., grand jury and criminal  
20 trial subpoenas) are issued without notice to any party other than  
21 the recipients (i.e., no notice to targets or defendants), orders and  
22 commissioner's subpoenas issued in execution of treaty requests  
23 pursuant to Section 3512 and the applicable treaty likewise should  
24 require no notice other than to the recipients. In the absence of a  
25 specific request to provide notice, a district court and United  
26 States authorities can assume that a requesting foreign authority has  
27 provided such notice as the foreign law requires, or that foreign law  
28 does not require notice and the requesting foreign authority does not



1 consider notice to be necessary or useful. Accordingly, a federal  
 2 district court should authorize a commissioner to collect the  
 3 evidence requested without notice to any party other than the  
 4 recipient of the commissioner's subpoena except to the extent that a  
 5 request asks for specific notice procedures.

#### 6 d. Right to Financial Privacy Act

7 The Right to Financial Privacy Act, 12 U.S.C. §§ 3401 et seq.,  
 8 does not apply to execution of foreign legal assistance requests.  
 9 Young v. U.S. Dep't. of Justice, 882 F.2d 633, 639 (2d Cir. 1989); In  
 10 re Letter of Request for Judicial Assistance from the Tribunal Civil  
 11 de Port-Au-Prince, Republic of Haiti, 669 F. Supp. 403, 407 (S.D.  
 12 Fla. 1987); In re Letters of Request from the Supreme Court of Hong  
 13 Kong, 821 F. Supp. 204, 211 (S.D.N.Y. 1993). Consequently, to the  
 14 extent that execution of a request entails production of bank or  
 15 financial records, notice provisions of the Act do not apply, and the  
 16 commissioner need not give, nor arrange for the custodian of records  
 17 to give, notice to an account holder.<sup>3</sup>

### 18 III. CONCLUSION

19 For the reasons stated above, the United States respectfully  
 20 requests that this Court issue an order in the form lodged separately  
 21 herewith appointing Assistant United States Attorney John J. Lulejian  
 22 as a Commissioner to execute portions of the Request, and authorizing  
 23 said Commissioner to take such actions as are necessary to comply  
 24 with the Request, including the issuance of compulsory process in the  
 25

26  
 27 <sup>3</sup> The Act itself applies only to accounts maintained in a  
 28 person's name and not to corporate, perhaps even partnership,  
 accounts. United States v. Daccarett, 6 F.3d 37, 50-52 (2d Cir.  
 1993).

1 form of Commissioner's orders or subpoenas, the administration of  
2 oaths to witnesses, and the taking of sworn testimony.